

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CA 08-1065

JEFFREY GLOVER

APPELLANT

V.

WACKENHUT CORPORATION and  
GALLAGHER BASSETT SERVICES

APPELLEES

**Opinion Delivered** MARCH 18, 2009

APPEAL FROM THE WORKERS'  
COMPENSATION COMMISSION,  
[NO. F506190]

AFFIRMED

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**JOHN B. ROBBINS, Judge**

This is an appeal by a claimant in a workers' compensation case. Appellant Jeffrey Glover received compensation for an admittedly compensable left-shoulder injury sustained on or about May 23, 2005, while working as a security guard for appellee, Wackenhut Corporation. However, Glover sought additional benefits because he claimed that he also hurt his cervical spine and right shoulder in the same incident. The employer resisted that portion of the claim, and after a hearing before an administrative law judge, appellant was denied those benefits as not causally related to the work incident. Appellant appealed to the Commission, and in a two-to-one vote, it affirmed and adopted the ALJ's decision. This appeal followed. We affirm.

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the

Commission's findings, and we affirm if the decision is supported by substantial evidence. See *Whitlach v. Southland Land & Dev.*, 84 Ark. App. 399, 141 S.W.3d 916 (2004). Substantial evidence exists if reasonable minds could reach the Commission's conclusion. *Id.* When a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires us to affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Id.* We defer to the Commission on questions of credibility. See *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (1989). The Commission has the duty of weighing medical evidence as it does any other evidence, and the resolution of conflicting evidence is a question of fact for the Commission. *Public Employee Claims Div. v. Tiner*, 37 Ark. App. 23, 822 S.W.2d 400 (1992).

Here, the evidence presented to the Commission showed that appellant, a man in his forties, had worked for appellee as a security guard for Superior Uniform in Eudora, Arkansas, for about two years by the time of the work-related incident on the night-shift in May 2005.<sup>1</sup> Appellant described that he worked his shift from 11 p.m. to 7 a.m. and on that night he noticed that a garage or storage door was left open. Appellant reached up to pull the rolling door downward when he felt a pop in the back of his neck and pain emanating into both shoulders. He said that both his shoulders and neck hurt at that time, although his right

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<sup>1</sup>The parties stipulated to a date of injury as May 23, 2005, although the testimony bore out that appellant sustained the admittedly compensable part of this injury on the night shift beginning on May 20 and ending on May 21. May 23 was the first visit to the doctor, to whom he was sent on the Monday following the incident.

shoulder hurt first. Appellant quit his job with Wackenhut in June and found another job in security, but he was fired after a month for sleeping on the job. He had not worked since that time.

Appellant was questioned about his prior medical issues. Appellant testified that he underwent a C5-6 cervical-fusion surgery in May 1994 and that he had not worked for some years following surgery. Appellant had applied for, but was denied, social security disability benefits. However, appellant contended that he had not had so much pain in his neck or muscle atrophy in his right shoulder until after the May 2005 work incident. Appellant requested benefits in the form of additional treatment, to include surgery and temporary total disability benefits, related to the cervical and right-sided problems he suffered.

The medical evidence following the 1994 cervical-fusion surgery showed that appellant intermittently saw health-care providers, sometimes complaining of neck pain and right-shoulder pain. In July 2004, appellant presented to Dr. Wright at the Lake Village Clinic in Eudora, Arkansas, complaining of pain at 9.5 on a scale up to 10 and stating that he could not raise his right arm. Appellant was diagnosed with frozen shoulder at that time. Clinic notes reflected that appellant had swelling in his right shoulder and that it appeared asymmetrical compared to the left shoulder in September 2004. Further orthopedic and physical-therapy treatments were postponed at appellant's request because appellant did not have insurance coverage at that time.

The first report to Dr. Wright in Eudora after the work incident was on May 23, 2005. His chief complaint was "left shoulder pain" following a work incident pulling down an

overhead door. He presented for a check-up on May 25 where he complained of “no neck pain” but pain in both shoulders. An MRI was ordered, but the employer approved only left-sided treatment because appellant reported only a left-shoulder injury and had a history of cervical surgery. On return visit on June 14, appellant reported no neck pain and only pain in the left shoulder. He was released at maximum medical improvement for his left-shoulder injury on the same date.

Appellant was seen by orthopedic specialists in August 2006, presenting with wasting of the right shoulder and arm muscles, secondary to cervical disc bulging at C4-5 that the report said “existed for two years.” This would have pre-dated the work incident. The previous fusion was seen on x-ray, along with some unremarkable degenerative changes noted at higher and lower levels of the cervical spine.

On this evidence, the ALJ found that “a preponderance of the credible evidence establishes that the claimant’s right shoulder and neck problems at issue pre-existed the incident on May 23, 2005, and the claimant has failed to establish that he sustained a right-shoulder injury or a neck injury on May 23, 2005[.]” The ALJ explained his reasoning, based in large part on the medical records that preceded May 2005. While appellant clearly suffered from cervical and right-shoulder maladies after that date, they were not found to be causally connected to the door-closing event. It is the claimant’s burden to demonstrate a causal connection between the injury and the employment, and this presents a question of fact. Ark. Code Ann. § 11-9-102 (Supp. 2007); *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). There is substantial evidence to support the finding that appellant failed

in his burden of proof to demonstrate that his significant cervical and right-sided injuries were caused or aggravated by the workplace incident on May 23. Our function is to determine if there is a substantial basis for the conclusion reached. In this appeal, there is such evidence.

We affirm.

KINARD and BAKER, JJ., agree.